From: "BEEDLE, Ralph" <rb@nei.org>
To: "'mtl@nrc.gov'" <mtl@nrc.gov>
Date: 10/21/02 3:58PM
Subject: Comment on Implementation of a Pilot Program Incorporating Alternative Dispute Resolution

8/21/02
67 FR 54237
(4)

October 21, 2002

Mr. Michael T. Lesar
Chief, Rules and Directives Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Mail Stop T-6 D59
Washington, DC 20555-0001

SUBJECT: Request for Comment on Implementation of a Pilot Program Incorporating Alternative Dispute Resolution into the NRC's Enforcement Process (67 Fed. Reg. 54237; August 21, 2002)

Dear Mr. Lesar:

On behalf of the commercial nuclear energy industry, the Nuclear Energy Institute hereby submits the attached comments for the NRC's consideration as it evaluates whether to institute a pilot program using Alternative Dispute Resolution (ADR) techniques to supplement the current enforcement process. As requested in the Federal Register notice, "Enforcement Program and Alternative Dispute Resolution; Requests for Comments and Announcement of Public Meetings," the comments respond to the NRC's specific questions regarding when and how ADR should be used.

Ralph E. Beedle
(202) 739-8088
rb@nei.org
<<10-21-02_NRC_Comment on Implementation of ADR Pilot Program.pdf>>

Template = ADM-013

E-RIDS = ADM-03
Add = B. Westreich (BLW)

NUCLEAR ENERGY INSTITUTE

Ralph E. Beedle
SENIOR VICE PRESIDENT
AND CHIEF NUCLEAR OFFICER
NUCLEAR GENERATION

October 21, 2002

Mr. Michael T. Lesar
Chief, Rules and Directives Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Mail Stop T-6 D59
Washington, DC 20555-0001

SUBJECT: Request for Comment on Implementation of a Pilot Program Incorporating Alternative Dispute Resolution into the NRC's Enforcement Process (67 Fed. Reg. 54237; August 21, 2002)

Dear Mr. Lesar:

On behalf of the commercial nuclear energy industry, the Nuclear Energy Institute[1] hereby submits the attached comments for the NRC's consideration as it evaluates whether to institute a pilot program using Alternative Dispute Resolution (ADR) techniques to supplement the current enforcement process. As requested in the Federal Register notice, "Enforcement Program and Alternative Dispute Resolution; Requests for Comments and Announcement of Public Meetings," the comments respond to the NRC's specific questions regarding when and how ADR should be used.

As NEI has made clear in previous comments on the use of ADR as a supplement to the enforcement process,[2] the industry supports the agency's efforts in this regard. ADR has the potential to increase the efficiency with which disputes are resolved, thereby minimizing both the time involved and the need for a large commitment of staff and resources. Because ADR is designed to be less adversarial and less formal than traditional adjudicative or administrative processes, it can promote greater communication and, in turn, greater cooperation among the parties. Effective ADR

[1] NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

[2] Letter from Ralph E. Beedle to Michael T. Lesar, January 28, 2002.

1776 I STREET, NW SUITE 400 WASHINGTON, DC 20006-3708 PHONE 202.739.8088 FAX 202.785.4019 rb@nei.org

regimes allow parties to have more control over their conflicts as they are largely responsible for the development of the dispute resolution process as well as the ultimate resolution achieved. Also, by fostering earlier and more direct communication, ADR may lead to more timely and better corrective action where such action is warranted.

The success of any ADR program—whether a pilot or one instituted on a more permanent basis in the future—will depend, in very large part, on the support shown by the Commission and senior NRC management. This may require an effort by those charged with developing the program to inform the Commission and NRC staff about the objectives of the program and why it is structured in a particular way. Even more specifically, the Commission and senior management should be made aware of the overall benefits of a new agency paradigm—wherein the agency voluntarily agrees to permit disputants to exercise greater control over the resolution of their dispute.[3] The Commission's exercise of strong leadership in this regard, affirmatively conveying its support for the program and that of senior management, will be critical to the program's acceptance by agency personnel who are potential ADR participants.

The NRC seeks additional input from stakeholders on substantive issues which are to be considered as the agency develops an ADR pilot program. The attachment to this letter provides the industry's detailed recommendations in response to these inquiries. In sum, the industry supports development of a pilot program testing the use of ADR in potential discrimination cases.[4] Where discrimination has been alleged, ADR should be offered at the earliest juncture, i.e., following identification of an allegation of discrimination *but prior to a full agency investigation of the matter.*[5] ADR techniques used at this stage could be facilitative or evaluative,

---

[3] The ADR Program Managers Resource Manual (ADR Manual)[3] highlights several arguments federal agencies often encounter from agency staff resistant to using ADR. Two arguments that may be anticipated in this context are "Using ADR means loss of control of cases" and "ADR takes too much of managers' time." The ADR Manual's response to the first potential objection is "ADR gives more control over process and outcome, not less," and it allows the parties to consider a broader set of resolutions than is normally available in judicial or administrative forums. The Manual's response to the potential concern that ADR will take too much of managers' time is: "The life of an unresolved case will take more time."

[4] Although the ADR pilot program should be limited to potential discrimination cases, ADR may well be a beneficial means of resolving a variety of enforcement actions. At this point, there is no basis to limit the future application of ADR, and the NRC should consider applying ADR in these other enforcement actions upon completion of the pilot.

[5] Offering ADR at this point is likely to provide the greatest benefit to all parties, as neither has yet expended significant time, funds or emotional resources. However, ADR may also be valuable at later points in the enforcement process and the industry supports consideration of ADR at those junctures as well. The NRC has identified three other appropriate ADR opportunities in the flow chart it used as part of its presentations at recent public meetings on ADR.

depending on the agreement of the parties. Regardless of what techniques are agreed upon, however, the ADR process clearly should have the goal of *reconciliation* (which is in accord with the objective of the initial Department of Labor/Occupational Safety and Health Administrative process) or, in some circumstances, another mutually agreeable resolution. Further, the ADR pilot should be designed to permit the licensee and the employee to actively engage in confidential discussions. With regard to the pool of neutrals, the parties should be permitted to choose individuals with appropriate expertise and experience from other federal agencies, private practice as well as adequately skilled NRC personnel. Finally, the NRC would be expected to perform two critically important functions. One would be to observe the conduct of the ADR and, potentially, assist the neutral by, for example, suggesting areas for further discussion.[6] In addition, the NRC would review any proposed resolution to ensure that the underlying safety issue has been or will be adequately addressed and the resolution is not contrary to the NRC's Policy on maintaining an open work environment.[7] Once the resolution has been agreed to by the parties and reviewed by the NRC, the NRC would not pursue further enforcement action.

A properly designed and implemented ADR pilot program has the potential to serve the interests of all parties to a discrimination case. Most notably, both the employee and employer may be able to more quickly put the dispute behind them while the NRC continues to exercise its responsibility to protect the public health and safety by overseeing the terms of each resolution to ensure it is consistent with law and public policy. That having been said, ADR, despite its beneficial features, will not be successful in every case. As such, the industry strongly urges the NRC to continue to consider ways to address the fundamental concerns industry and other stakeholders expressed during the NRC Discrimination Task Group's evaluation process. ADR should not be developed as a substitute for improving the NRC's handling of alleged discrimination cases as it does not supplant that imperative. Rather, successful ADR proceedings can serve to minimize the impact of discrimination allegations on all parties and the NRC as well as encourage corrective actions that enhance the safety conscious work environment.

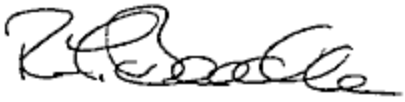
---

[6] This aspect of the NRC's role would not, however, include advocating on behalf of either the licensee or the employee.

[7] If ADR is undertaken at later points in the enforcement process (after issuance of a NOV or imposition of an Order), the NRC would become a party to the dispute, and its role would change accordingly.

If you have questions about the industry's views or would like to discuss them further, please contact me or Ellen Ginsberg, NEI Deputy Counsel, at 202-739-8140 or ecg@nei.org.

Sincerely,



Ralph E. Beedle

Attachment

By E-Mail
Hard Copy to Follow

Attachment

Response to NRC Questions on Implementation of a Pilot Program Incorporating Alternative Dispute Resolution into the NRC Enforcement Process

I. Introduction

The Federal Register notice issued August 21, 2002, states that the NRC is considering offering opportunities for Alternative Dispute Resolution (ADR) as part of the enforcement process but wishes to ensure the success of the ultimate program by instituting a pilot program to test the ADR construct developed by the staff. The pilot program approach offers several advantages. By providing stakeholders with the opportunity to share their views and recommendations with the agency prior to developing the pilot program, the agency is likely to make a more informed decision and can assure it has communicated about the ADR process with those potentially affected. In addition, once the pilot program has run for the designated period of time, any need for changes in scope or approach should be apparent. A careful review of the pilot at that point will allow the NRC to institute improvements prior to establishing the program as a permanent part of the enforcement process. We would expect, however, that upon completion of the pilot, the NRC again will obtain stakeholders views.

A successful ADR program has the potential both to promote more open dialogue and to provide a quicker and more efficient path to resolving disputed issues, delivering potentially more effective results. The ADR process also may reduce contentiousness and improve relationships between the agency and parties to the disputes. For these reasons, the industry encourages the NRC to proceed with the development of an ADR pilot program as part of enforcement of discrimination cases.

II. Responses to Specific Questions Posed in Federal Register Notice

A. Potential Enforcement Actions for Which ADR is Appropriate

The use of ADR may be appropriate for all types of enforcement cases. The Administrative Dispute Resolution Act of 1996 (ADR Act) specifically mandates that administrative agencies consider the use of ADR in connection with enforcement actions when developing ADR policies.[1]

[1] See 5 USC § 572.

However, because the NRC is considering a pilot program to test the efficacy and value of using ADR in enforcement, ADR should be offered initially only cases involving discrimination allegations. The use of ADR is particularly appropriate in these cases because a clear objective of ADR is to limit the onset of defensiveness, polarization and miscommunication by facilitating more and focused discussion between the parties. ADR promotes the very things that typically are lacking in potential discrimination cases—a greater understanding of the other party's arguments and positions. ADR was developed specifically to elicit communication in a non-adversarial and confidential forum.

That the NRC itself offers ADR for intra-agency employment discrimination is testament to the appropriateness of instituting an ADR program for potential cases wherein violation of 10 CFR 50.7 has been alleged. In addition, the Department of Energy (DOE) has successfully used ADR in its Employee Concerns Program.[2] And, the Environmental Protection Agency implemented a workplace mediation program to address grievances and discrimination complaints, with a year-long pilot phase focusing on disputes that are the subject of discrimination complaints.[3]

Providing employees and licensees with the opportunity for early ADR to resolve discrimination allegations could alleviate, if not cure, many of the problems associated with the NRC's current process for handling discrimination claims.[4] First, by making ADR available following submission of an allegation but prior to a full-blown Office of Investigation (OI) review, many of the problems associated with OI investigations could be avoided. Second, offering an ADR process to resolve discrimination allegations could address concerns about NRC impartiality if the available pool of neutrals includes qualified individuals from other federal agencies and private practice. Third, using an ADR process designed to promote reconciliation between the parties (rather than force a determination that one party is right and the other wrong) is likely to favorably influence the work environment. In fact, earlier resolution of discrimination cases could prevent their often long-lived notoriety and the workforce may be less distracted than by the various goings-on attendant to the current process. Fourth, if the ADR process facilitates early resolution, it may not be necessary to pursue formal adjudication before the Department of Labor (DOL). Therefore, both the employee and the licensee could avoid the large financial, emotional and resource outlay typically necessary for DOL litigation. Finally, a successful ADR proceeding is likely to consume far less of all of

---

[2] The Hanford Joint Council, used by DOE, was described in a law review article accompanying comments submitted in response to the NRC's first Federal Register notice requesting comment on the use of ADR in NRC enforcement. See Letter to Michael Lesar from Billie Garde, March 28, 2002.

[3] The pilot also included disputes subject to the agency's negotiated grievance or administrative grievance procedures.

[4] These problems have been discussed at great length by NEI in comments to the NRC Discrimination Task Group See letter to William Borchardt from Ralph Beedle dated January 22, 2001, and letter to Barry Westreich from Ralph Beedle, August 17, 2001.

the parties' time and encourage quicker implementation of the agreed-upon corrective action (which could be designed, at least in part, to enhance the plant's safety conscious work environment).

B. Appropriate ADR Opportunities

It is critically important to offer ADR in the initial phases of the enforcement process for potential discrimination cases.[5] As discussed above, early intervention in a potential discrimination case can promote full and open discourse of the issues, and thereby help prevent the parties from becoming entrenched and unyielding in their views. At the least, ADR can have a mitigative effect if offered sufficiently early.[6] Thus, the pilot program should be structured to offer an initial ADR opportunity following identification of an allegation of discrimination but prior to a full OI investigation of the matter.

The industry's suggestion that ADR be made available following submission of an allegation but prior to the OI investigation differs from the construct proposed by the NRC during recent public meetings on ADR. The flowchart used in the NRC presentations indicates that the agency contemplates offering ADR based on the *low* significance of an allegation. The industry, in contrast, recommends that ADR be offered in any case in which the Allegations Review Board recommends initiation of an OI investigation.

The industry also supports the use of ADR to resolve discrimination disputes pending later in the enforcement process. In this regard, the NRC apparently is considering offering ADR after issuing a NOV and after imposing an Order. These are reasonable points at which to provide for ADR because the process holds the promise of avoiding further expenditure of personnel and financial resources as well as more expeditious implementation of any corrective action agreed upon.

C. ADR Techniques

It is well established that ADR can take many forms, and, in large part, its multiple facets and flexibility are the strength of the ADR concept. NRC stakeholders have suggested that the NRC consider ADR techniques including facilitation, mediation, arbitration, and a standing "council," as has been used at the Department of Energy's Hanford site.[7] Determining which techniques should be made available as

---

[5] To encourage all parties to avail themselves of the possible benefits of early ADR, the NRC could notify both the employee and the licensee of the ADR option as part of the agency's initial contact.

[6] Despite the industry's strong support for ADR, if enforcement is pursued, the NRC should make clear that no inference may be drawn by the agency regarding the willingness of the parties to agree to ADR or the lack of success in any particular proceeding.

[7] While this approach has been used by DOE at the Hanford site, it appears to be a considerably more involved process than is necessary for the initial ADR pilot program.

part of the pilot program, and in the future if a more expansive ADR program is implemented, should turn on the likelihood of any given technique achieving the program's goals.

Facilitation and mediation are likely to be the most appealing techniques for ADR in the pre-investigation stage of a discrimination case as well as in the post-investigation stage, because they permit a neutral third party, who does not have actual authority to impose a solution, to help the *participants* resolve the dispute. A particularly noteworthy feature of facilitation and mediation is its voluntary nature. While this means either party can discontinue participating or refuse to reach an agreement, it also means that parties who choose to participate in a mediated discussion are likely to be fairly committed to reaching an agreement. This approach is, in practical terms, least intrusive while offering an objective voice to help clarify and, possibly, assist in assigning priority to the disputed issues.

In certain instances, the parties to an ADR proceeding on a discrimination claim may wish to use the neutral evaluation technique, in which a neutral conducts separate sessions with the parties to hear each party's positions. The evaluator is responsible for identifying the strengths and weaknesses of the parties' positions as well as sharpening the focus on areas of agreement and dispute. Ultimately, the neutral evaluator will issue a nonbinding assessment of the merits of the case, with the goal of encouraging each side to see the weakness of its and the strength of the other party's case, as a means of promoting a mutually agreeable resolution.[8]

For ADR following issuance of a Notice of Violation (NOV) and imposition of an Order, two other ADR techniques may be useful. One is the use of a settlement judge who, as is the case in civil litigation, would take an active role in helping to conceptualize or craft a settlement. The second is arbitration.[9] Arbitration assigns to the neutral the responsibility to reach a decision to which the parties to the dispute have agreed to be bound. [10]

In sum, the pilot program should permit the parties to choose among ADR techniques. We believe that the parties should be encouraged to and are likely to choose a facilitated form (e.g., mediation or a neutral evaluation) for an early stage ADR and consider more decision-oriented techniques (e.g., settlement judge or arbitration) with the progression of the enforcement action. However, there is no reason to limit artificially the techniques available at a particular juncture if the

---

[8] Because this assessment would be a communication from the neutral party, it would not be subject to disclosure under the Freedom of Information Act.

[9] This discussion is intended to focus on binding arbitration.

[10] Courts typically will not overturn an arbitrator's decision unless there is clear evidence of undisclosed bias, the award violates public policy or the arbitrator did not have the requisite authority to confer the award.

parties see a potential benefit to employing a particular technique ordinarily used at another stage of ADR.

D. Who Should Serve As A Neutral

The ADR Act provides few limitations on the pool of individuals who may be considered to serve as a neutral in an ADR proceeding sponsored by a federal agency. The statute permits the parties to choose a "permanent or temporary officer or employee of the federal government or any other individual who is acceptable to the parties to a dispute resolution proceeding...."[11]

The NRC's pilot program should follow the construct of the ADR Act. The pool of possible neutrals for the pilot program should include individuals who have training, expertise and experience necessary to facilitate, mediate or, in some cases, arbitrate the dispute involving allegations of potential discrimination. The NRC should not simply assign this task to, for example, Atomic Safety and Licensing Board judges. Parties should be permitted to choose from among other properly skilled federal officials and individuals in private practice. This will provide the parties with wide latitude in choosing a neutral, thereby effectively preempting any potential allegations of agency bias.

E. Who Should Be Participate As a Party

For ADR offered in the early stages of a discrimination case,[12] the employee and the licensee are the disputants and, as such, would be the parties to the facilitated discussion. As noted, the ultimate objective is to produce reconciliation or some other outcome leading to a settlement of the dispute. The NRC would participate, but its role would be neither to advocate on behalf of the employee or licensee, nor to demonstrate that a discriminatory act did or did not take place. Rather, the NRC's role would be to oversee the process and to review any agreement reached by the parties to ensure that the underlying safety issue has been or will be adequately addressed and the resolution is not contrary to the NRC Policy on maintaining an open work environment. The NRC would not take further enforcement action once the agreement has been agreed to by the parties and reviewed by the NRC.

Certainly the role outlined above is considerably different than the role the NRC typically performs in response to a discrimination claim. As the system currently operates, the Office of Enforcement (OE) receives the investigative information from OI and, if it concludes that the licensee violated 10 CFR 50.7, OE proceeds to take action to issue a NOV and, eventually, impose an Order. Although the licensee is offered the opportunity to present exculpatory or explanatory information during a

---

[11] 5 USC 573 (a).

[12] The early stages of a discrimination case refer to the pre-investigation and post-investigation opportunities for ADR.

pre-decisional enforcement conference (PEC), by and large the industry's perception is that the PEC suffers from significant defects and rarely yields a change in the agency's perspective.

Both the NRC and other stakeholders have articulated concerns about removing the agency from its typical role as decision-maker. It appears that these concerns relate to a perceived abdication of the NRC's regulatory responsibility. While these views are understandable, there are several compelling reasons why they should not prevail. First, this process is similar to the DOL process in that the NRC, as a federal agency, would be promoting reconciliation prior to its formal evaluation and determination of discrimination. Second, although reconciliation is directed at the employee and licensee as the primary disputants, the NRC may identify corrective actions or other possible features of a settlement for consideration by the parties. Finally, the NRC will continue to carry out its regulatory responsibility by overseeing the process[13] and reviewing the resolution agreed upon.[14]

As enforcement for a discrimination claim proceeds to the later stages, the dispute at hand becomes either issuance of a NOV/proposed civil penalty or imposition of an Order. At either of those points, the dispute is between the NRC and the licensee. Although we are cognizant of the arguments promoting the employee's interest in the entirety of the enforcement process, the nature of the dispute should dictate the parties to its resolution. At the initial points at which ADR is offered—prior to and after the OI investigation—the agency has not yet formally issued a NOV and, therefore, the dispute remains between the employee and the licensee. At that point, the enforcement-related dispute can no longer be resolved simply by reaching a resolution with the employee. Moreover, ADR is not the sole opportunity for the employee to provide the NRC with information regarding the alleged discrimination as the NRC maintains contact with the individual throughout the process and permits him or her both to attend the predecisional enforcement conference and to respond to the licensee's presentation.

III. Additional Ground Rules for the Pilot ADR Program

A. Confidentiality

Confidentiality is one of the most significant attributes differentiating ADR from other more formal administrative or adjudicative processes. To force ADR sessions to become public effectively would transform them into the very kind of proceedings

---

[13] For example, the NRC would ensure that the neutrals chosen are competent to conduct an ADR proceeding, there is no real or perceived conflict of interest associated with the neutral, and the proceeding is conducted in accord with the professional standards developed for the program. These standards might include, for example, preserving impartiality, maintaining the confidentiality, and preventing abuse of the process.

[14] This would include, for example, ensuring that the resolution provides for adequate measures to address the underlying safety/technical issue and does not contain restrictions on the employee's ability to report safety or other issues to management or the NRC in the future.

to which ADR is intended to be an alternative. The NRC itself recognizes that confidentiality is a critical feature of a successful ADR program.[15] In fact, the NRC has stated that "...frank exchange may be achieved only if the participants know that what is said in the ADR process will not be used to their detriment in some later proceeding or in some other matter."[16]

The industry recommends that, as is provided for under the Administrative Dispute Resolution Act of 1996, communications would be afforded confidentiality to the extent a neutral is involved in the communications. This would include not only oral communications, but any communication by the neutral and provided to all parties to the proceeding (e.g., initial neutral evaluations, settlement proposals, etc.). The analogy to settlement negotiations is persuasive in this regard. The reasons settlement negotiations are not public are equally applicable to maintaining confidentiality for ADR sessions and the associated documents.

While it is reasonable for the public to express concern about how decisions are reached in an ADR proceeding, the NRC's role (overseeing the proceeding to ensure the parties do not unwittingly accede to some grave injustice or gross mistake) strikes the proper balance between the need for accountability to the public and a level of public scrutiny likely to hamper the effectiveness of the ADR proceeding. However, to assuage any stakeholder concerns regarding the nature of what will go on "behind closed doors," the NRC should publish a detailed description of the ADR process including how various ADR methods are implemented. In addition, the industry recommends that the NRC's ADR pilot provides for disclosure of the pendency of an enforcement action, the general basis for the action (e.g., reference to the regulation allegedly violated), the fact that the parties are pursuing ADR, and the general terms of the resolution, if any, ultimately reached through ADR.

[15] See 66 Fed. Reg. 64892.

[16] Id.

WINSTON & STRAWN

1400 L STREET, N.W., WASHINGTON, DC 20005-3502
202-371-5700

35 W WACKER DRIVE
CHICAGO, IL 60601-9703
312-558-5600

200 PARK AVENUE
NEW YORK, NY 10166-4193
212-294-6700

333 SOUTH GRAND AVE
LOS ANGELES, CA 90071-1543
213-615-1700

43 RUE DU RHONE
1204 GENEVA, SWITZERLAND
41-22-317-75-75

21 AVENUE VICTOR HUGO
75116 PARIS, FRANCE
33-1-53-64-82-82

October 21, 2002

8/21/02
67FR54237
(3)

Mr. Michael T. Lesar
Chief, Rules and Directives Branch
Division of Administrative Services
Office of Administration
Mail Stop T-6D59
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Request for Comment on the Use of Alternative Dispute Resolution in Discrimination Enforcement; 67 *Federal Register* 54,237 (August 21, 2002)

Dear Mr. Lesar:

Winston & Strawn is pleased to have the opportunity to comment on the potential use of Alternative Dispute Resolution (ADR) in connection with potential NRC enforcement. These comments are submitted in response to the above-referenced *Federal Register* notice. According to the notice, the NRC Staff is considering a pilot program for the use of ADR in cases of potential discrimination and/or wrongdoing enforcement actions. The comments are filed with the support and input of numerous clients of the firm that the firm has represented in discrimination and enforcement proceedings.

Winston & Strawn supports both the use of ADR in discrimination enforcement proceedings and the development of an ADR pilot program, for the reasons detailed below. These comments focus on the use of ADR in discrimination cases, although ADR may be useful in cases involving other types of wrongdoing.

Although we support the use of ADR and appreciate the agency's consideration of measures to improve the discrimination enforcement process, we add that implementation of an ADR program should not be viewed as a solution to the numerous issues that have arisen in recent years concerning the NRC's current process for handling discrimination allegations. For example, to the extent the agency and employers remain at loggerheads over the legal standards used by the NRC, a matter on which we have commented previously, disputes between licensees and the agency may remain polarized and difficult to resolve even with the prospect of ADR. Fundamental changes to the processes for handling discrimination allegations deserve concurrent focus with ADR program development.

E-RIDS = ADM-03
Add = B. Westreich (BCW)

Template = ADM-013

We note that a recent SECY memo to the Commissioners advocates broad changes to the NRC's process for handling discrimination claims. In particular, the recommendation to the Commission is for a "fundamental realignment of the way the Agency handles discrimination complaints" by realigning the programmatic responsibilities for employee protection to licensees, rather than trying to drive cultural improvements through the enforcement and resolution of individual cases. SECY-02-0166 (Sept. 12, 2002). That recommended process would eliminate most if not all NRC investigations of individual discrimination claims, bringing the NRC in line with the practices of other federal agencies. If implemented, the proposal seemingly would largely eclipse the need for ADR in the enforcement context. (ADR could continue to be used, as it can be used now, in resolution of the private dispute between the licensee and employee.) To the extent the NRC would remain involved in some set of residual discrimination investigations, particularly during any transition period toward potential implementation of the SECY memo recommendations, ADR may provide a useful tool.

Thank you for your consideration of our comments. Please contact us if you should have any questions.

Respectfully submitted,

Donn C. Meindertsma

Encl.

Comments of

WINSTON & STRAWN

on the

Use of Alternative Dispute Resolution in NRC Discrimination Enforcement

October 21, 2002

The NRC has requested comments regarding the use of Alternative Dispute Resolution (ADR) in certain enforcement disputes. 67 *Federal Register* 54,237 (August 21, 2002). In particular, the NRC has requested comments to take into consideration in proposing a pilot program for the use of ADR in enforcement cases involving allegations of discrimination and/or wrongdoing.

Winston & Strawn appreciates the opportunity to submit these comments on behalf of licensees represented by the firm. As a summary of our comments, Winston & Strawn supports the use of ADR in discrimination enforcement cases. Among other things, an ADR option promises potential improvements in the timeliness of discrimination claim resolution, and the presence of a neutral early in the process may help minimize the polarization between parties that is often characteristic of discrimination claims. We also believe that ADR would in no respect weaken the ability of the NRC to achieve its ultimate interest in the discrimination context: enhancement of licensee safety conscious work environment efforts.

Implementation of ADR should not, however, lead to additional burdens upon licensees in discrimination cases. In particular:

- The NRC should not become involved in or require ADR sessions between the licensee and an employee in a case that would not otherwise meet NRC thresholds for investigation or other NRC involvement.

- An NRC ADR program should not impose a requirement that the licensee engage in dispute resolution efforts with the employee-alleger, nor any formal step for licensee-employee negotiations; whether ADR is the proper vehicle to resolve the private dispute should be at the licensee's option.

- ADR should not have the effect of adding another step to, and thus of imposing another resource burden on, already extensive and lengthy NRC discrimination investigation and enforcement proceedings.

- An ADR program should not impair the ability of licensees and the NRC Staff to privately resolve discrimination allegations and potential enforcement through voluntary settlement negotiations, which would not involve ADR or a neutral.

We support the use of a pilot program for implementing ADR in discrimination enforcement. A pilot program would provide an opportunity to assess the success of ADR in resolving disputes and the potential downsides of ADR use.

Below, we address the potential benefits of ADR in the context of discrimination enforcement; express cautions that the NRC should take into account in designing a pilot program; and recommend parameters for an ADR program.

I. The Potential Benefits of ADR in Discrimination Enforcement

We support the availability of ADR in connection with discrimination enforcement matters for many of the same reasons identified in the *Federal Register* notice and in NEI's comments. ADR may diffuse emotional discrimination claims through the early intervention of a neutral and may result in prompt resolution of some discrimination claims, thus easing the burden and cost imposed by disruptive and lengthy investigation and enforcement processes. Moreover, by introducing a neutral, ADR may ensure full and fair consideration of licensee legitimate business interests in the context of a discrimination claim. We see no reason why ADR, successful many times in other employment discrimination contexts, cannot be successful at times for resolving discrimination allegations that happen to be lodged with the NRC.

We disagree with the concern raised by a citizen group representative, as summarized in the *Federal Register* notice, that ADR could "weaken" the enforcement process. Our disagreement is based on our view that the NRC's focus in the discrimination arena should be to encourage licensees to reflect upon and implement measures that may enhance the safety conscious work environment and minimize the risk of future, similar discrimination claims. The recent Senior Management Review Team analysis of the proper role of the NRC in the discrimination context agrees that driving cultural enhancements through isolated discrimination enforcement actions is not a desirable approach. The NRC should shift its focus to proactive and non-prescriptive enhancement of the work environment. *See* SECY-02-0166 (Sept. 12, 2002). With this proper focus in mind, nothing about ADR would weaken the NRC's objectives because the NRC in ADR sessions could pursue corrective actions by the licensee that foster safety conscious work environments. True, a successful ADR effort in a given case would likely leave the parties without a final answer by the NRC as to whether a particular personnel decision constituted, in the agency's estimation, discrimination. Yet, neither the NRC's role in this arena, nor the protection of public safety and health, would be weakened by the lack of a discrimination determination because the NRC could still pursue its ultimate interest in addressing the licensee's work culture.[1]

---

[1] Although it did not involve an intermediary or ADR, the recent resolution of a discrimination claim against Exelon through a Confirmatory Order illustrates how the NRC can achieve its central objective to encourage the enhancement of safety conscious work environments. The licensee's prompt admission of a Section 50 7 violation allowed the NRC and the licensee to focus on their mutual interest to consider programmatic actions to minimize the risk of similar violations in the future and enhance sensitivity to employee protection regulations. *Exelon Generation Co , LLC*, EA-02-124 (Confirmatory Order Modifying Licenses, Oct. 3, 2002).

Moreover, successful resolution of a dispute through ADR would not have any chilling effect on the work environment. Instead, successful conciliation most likely would leave the impression that the objectives of both parties have been accomplished. An enforcement action, in contrast, may have unintended and counterproductive chilling impacts.

In addition to not weakening the NRC's role, ADR may help address some specific concerns about the process used in the current discrimination enforcement scheme.[2] Many stakeholders have criticized the lack of transparency in the process, the improper importation of criminal investigation techniques in second-guessing human resources decisions, the polarization of the parties that necessarily results from the NRC's approach, and duplication of the efforts of other agencies. To the extent dispute resolution can diminish the need for NRC investigations, these problems with the process will become less prominent.

II. Cautions About the Use of ADR in Discrimination Enforcement

While we support the use of ADR in discrimination enforcement, we offer the following cautions.

A. The Promise of ADR Will Not Be Fully Realized Without Concurrent Changes to the NRC Staff's Substantive Approach to Discrimination Allegations.

In some respects, as just discussed, the use of ADR in discrimination enforcement may alleviate certain concerns about the NRC's process for pursuing potential Section 50.7 violations. In other respects, standards the NRC currently applies in Section 50.7 cases to determine whether a discrimination violation occurred lead to polarization in the discrimination enforcement process. This polarization may impede ADR efforts to find common ground for resolution. While as noted above we believe the focus in discrimination enforcement, as well as in ADR efforts in discrimination cases, should focus on work environment issues, rather than a narrow "did Sally shoot John" inquiry, we expect that for the near future, the question whether discrimination occurred will be a primary topic in ADR sessions.

Chief among concerns about the NRC's discrimination standards is that the NRC Staff discounts an employer's legitimate business reasons for an employment action once the Staff concludes that some inference can be drawn that an employee's protected activity "in part" contributed to an employment decision. The "in part" test, as applied by the Staff, results in cited violations even in circumstances where the action taken by the employer was the most responsible course. *See* NRC Discrimination Task Group Report, "Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues" (April 2002), p. 25: "Since the NRC is not seeking relief for a wronged employee, but rather a penalty for violation of its regulation, *whether a licensee can prove that it would have taken the same action for legitimate reasons alone is not relevant*" (emphasis added).

---

[2] These issues are discussed in the recently released Final Report of the NRC Discrimination Task Group, "Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues" (April 2002).

Although an ADR option might bring about the opportunity to openly discuss application of substantive enforcement standards to a particular fact pattern, we are concerned that ADR attempts may prove futile in the types of disputes the NRC currently is active in investigating under Section 50.7. This concern may become more pronounced the later in a particular case that ADR efforts are initiated, because in the later stages the parties may have more closely focused on, and staked out positions on, whether discrimination occurred (rather than on work environment issues). Consider the following hypothetical case, submitted to ADR:

> A department director at a plant recommends to his vice president that a subordinate department manager be demoted. The director lays out a compelling case, citing the manager's borderline management skills and controversial style. These performance problems have resulted in potential non-compliance issues and deflated department morale. When pressed by the vice president, the director concedes that he did, in fact, consider as part of the manager's "style" the abrasive manner in which the manager recently pursued a nuclear safety concern. The manager's concern was valid, and while the way in which he pursued it was not egregious in any sense, the director is of the persuasion that the manager could have handled the matter more effectively. Weighing the pros and cons, the vice president approves the demotion recommendation.

The current "in part" test would result in an enforcement finding that the demotion violated Section 50.7. The legitimate reasons offered to the vice president and considered by him, and which tipped the scales toward demotion, are "not relevant" to the NRC, because the recommendation was tainted by consideration of protected activity. In fact, the only apparent way the vice president could avoid a Section 50.7 violation in the hypothetical would be to reject the recommendation and keep an under-performing manager in his position at a nuclear power plant.

Would ADR be useful in such a case? The NRC and the licensee would approach the case from diametrically opposed perspectives. Since the regulatory approach today dictates that "purity in management motive" must trump all other management values that might be brought to bear in a personnel decision, the NRC would see a clear violation. The licensee would take the position that it unquestionably followed the right course of action and that, moreover, this prudent decision of a company vice president should be vigorously defended. In short, management's position that it "ultimately did the right thing" would clash with the NRC Staff's stance that "doing the right thing ultimately does not matter" once motive is tainted. While a neutral might assist the parties in reaching a resolution, the neutral's job will be all the harder given the polarization in positions and interests that the NRC's current enforcement standards induce.

In short, while we support a pilot program that permits the use of ADR in discrimination enforcement cases, the benefits of ADR will be fully realized only if underlying substantive

issues with the agency's implementation of Section 50.7 are addressed concurrently with implementation of the program.

B. An ADR Program Should Not Add New Expectations on Licensees to Resolve Private Disputes.

NRC Section 50.7 investigations and enforcement proceedings grow out of an allegation by an employee (or sometimes more than one employee) that he has been discriminated against for raising a safety issue. Although the premise of these cases is an employer-employee dispute, the NRC's enforcement process involves only a regulator-licensee (or regulator-contractor) matter. The NRC has consistently expressed, and consistently informs discrimination allegers, that the NRC does not pursue the employee's interests or remedies for the employee.

An ADR component to the discrimination enforcement process should permit that distinction to be preserved. Both an employee who makes a claim of discrimination and the accused employer can opt to pursue any number of paths to address the claim. At one end of the spectrum, the parties can refuse to discuss amicable resolution and proceed to potential litigation. At the other end, the parties can talk the matter out and may be able to resolve it with a handshake. NRC involvement has not been expected or required in these private forms of resolution.

An NRC ADR program should not preclude efforts by the licensee and the employee to resolve the private dispute. Practically speaking, an NRC program could not do so because, as just noted, employers and employees have options outside the NRC's regulatory scope for resolving claims. We also see no need for an ADR program to formalize steps that endorse the involvement of the employee. Whether the employee is involved in the NRC ADR efforts ordinarily should be at the licensee's option, because the licensee may rather choose to deal directly with the employee outside the NRC regulatory process. Resolution of the private aspect of the dispute between the employee and the licensee through an NRC ADR program also would likely not be appropriate in later stages of a discrimination case, when the employee has chosen to pursue his or her claim through the Department of Labor, or when the employee and the licensee have already reached a resolution of the employee's discrimination claim.

In addition, a pilot ADR program should not impose any expectation that a licensee should engage in settlement discussions or ADR efforts with an employee-alleger simply because the discrimination allegation is of low significance. If a discrimination claim would not otherwise be referred for investigation and potential enforcement under applicable NRC thresholds, that should be the end of the NRC's involvement.

Finally, we believe that the focus and goals of the NRC ADR efforts should be carefully limited to matters between the NRC and the licensee. If the alleger is permitted a significant role or stake in the dispute resolution, the ADR effort is highly likely to become sidetracked toward an issue that is not part of the NRC enforcement process: a remedy for the alleger. As noted above, the licensee and employee are free to contest the appropriateness of remedies through

litigation or may seek to amicably resolve the matter by private resolution efforts or Department of Labor mediation. The focus for the NRC should be on the work environment, corrective actions related to the work environment, and the need for enforcement.

In short, if the discrimination allegation would not otherwise be pursued by the NRC, *e.g.*, for lack of a prima facie case, the NRC should not breathe life into a regulatory component to the dispute by purporting to oversee resolution efforts between the employee and licensee. Nor should the ADR process serve as a new avenue for employees to seek personal remedies through resolution that would not be awardable if the enforcement process ran to completion.

C. An ADR Program Should Attempt to Avoid Adding Another Step to the Enforcement Process.

While ADR brings the potential for benefits, it also brings the potential to add "another step" in the enforcement process. If ADR cannot be implemented in a way that provides a high probability of resolving the types of cases that lead to enforcement actions, ADR will become a burden, not an enhancement, or simply will not be used.

As currently implemented, the NRC's discrimination enforcement process results in lengthy phases of investigation, enforcement consideration, and enforcement implementation. The process is burdensome on all those involved in the discrimination allegation, including, typically, the employee-alleger, the accused perpetrator, other managers, the Employee Concerns Program, and licensee legal and Human Resources staff. Arguably, the burden and expense of the process have a more significant impact upon the licensee than does an ultimate finding of discrimination.

Accordingly, the pilot program should strive to assure that resort to ADR does not require delay in the process. For this reason, ADR should be implemented as early after the dispute has arisen as possible. We also suggest that ADR procedures remain informal; they should not, for example, involve formal proceedings before a "public council" that might require unwarranted preparation time and expense.

Another way to ease the enforcement burden would be to ensure that binding forms of dispute resolution, such as binding arbitration, remain as options. While entering into a binding resolution process would be voluntary, assurance by the licensee that the enforcement dispute will end with the ADR effort may be an attractive incentive to ADR because it will eliminate the burdens of the enforcement process discussed above. Licensees are unlikely to desire both an ADR session with the NRC and, later, a predecisional enforcement conference with the Staff. Of course, the NRC's ADR program must be structured to ensure that the agency will be bound by the results of a binding resolution effort, absent abuse of discretion or clear violation of public policy.

D. An ADR Element to the Enforcement Process Should Not Dissuade Voluntary Settlement Negotiations Between the Licensee and the NRC.

The current enforcement process does not preclude voluntary efforts by licensees to enter into negotiations with the NRC Staff to resolve discrimination allegations or findings. The NRC recently issued a Confirmatory Order to a licensee demonstrating that, in proper cases, licensee commitments to address broad environmental issues may achieve shared NRC and licensee objectives to minimize the risk of future discrimination claims, and so may provide a resolution path other than traditional enforcement.

An ADR program should not funnel into an ADR process all cases in which amicable resolution of the NRC regulatory issues is a possibility. The NRC should continue to entertain suggestions by licensees (and vice versa) for voluntary resolution of discrimination disputes outside the enforcement paradigm or an ADR program.

The NRC should also consider whether the existing allegation referral process could be used in conjunction with a voluntary settlement process to achieve prompt resolution of discrimination claims and implementation of any appropriate corrective actions. The NRC's allegation referral process has proven in many instances to lead to prompt licensee investigations of issues and prompt corrective actions. We see no reason why this process could not be employed, at the Regional level, for discrimination allegations. The Region could refer discrimination claims to the licensee and use the licensee's report and recommended corrective actions (if any) as the point of departure for settlement discussions of any potential discrimination violation. To the extent the NRC deems the corrective actions insufficient to address the problems identified, discussion with the licensee at the appropriate regional and licensee management level should ensue. This process, were it formalized as part of the ADR process or elsewhere, could be useful in minimizing the number of OI investigations performed, thereby conserving NRC resources. Such a process also would likely permit licensees to take less defensive, more constructive approaches to discrimination claims.

III. ADR Program Components

The following responds to issues raised by the Staff in its ongoing evaluation of a potential ADR program:

A. Timing of ADR Use

The *Federal Register* notice indicates that the Staff is evaluating the various points in the process when ADR might be appropriate. We agree with other commenters that any NRC ADR program should be flexible. We see no reason why the availability of ADR should be limited to any given stage of a discrimination case, just as there is no reason why the licensee and the NRC should be restricted from discussing amicable settlement of a discrimination claim at any given stage. We advise that the pilot program permit use of ADR at any stage.

As noted above, ADR should be available as early as possible in the process. The fact that ADR is pursued prior to a full investigation by the NRC into a discrimination claim may in many cases not be a barrier: if the focus is on corrective actions and enhancements, neither a finding of whether discrimination occurred in a particular case nor an investigation that strives to produce that finding will be highly relevant. As advocated above, we do not believe NRC policy and objectives in this area must be driven by individual discrimination findings.

B. Pool of Neutrals

We believe that a broad pool of neutrals could be used for ADR in the discrimination context, including mediators from private dispute resolution firms, retired judges and magistrates, and the like. Preferably, neutrals would have substantial experience with employment discrimination cases, include serving as neutrals in resolution of discrimination claims. To assure the appearance of impartiality and full neutrality, we do not advocate that the neutrals include persons affiliated with the NRC itself.

C. Ground Rules

The Staff invites comments on who should attend potential ADR sessions. The participants should include licensee management and NRC representatives with authority to resolve allegations of Section 50.7 violations, such as authority to agree to corrective actions, and their legal representatives. As a general rule, we do not believe that the employee-alleger should be included as a participant unless (consistent with our comments above) the licensee has opted to attempt to resolve both the regulatory issues and the private dispute through a unified, or three-way (NRC, licensee, employee) ADR effort under the NRC's program.

Other ground rules include confidentiality and agreement by all participants not to use statements during, or information prepared for, ADR sessions in any future proceedings. Current NRC enforcement in the discrimination context results in the agency's public release of outcomes, such as whether there was discrimination or not. Under an ADR program, publicity similarly should focus on the outcome of a mediated case, including information on actions to be taken by the licensee.

D. A Scenario

As an aid to envisioning an ADR element to the discrimination enforcement process, consider the following hypothetical:

> An electrician reports concerns about the adequacy of radiation protection measures for work performed during an outage in the reactor building. The electrician subsequently is not selected for a supervisory position in his department. He contacts the NRC and expresses his belief that his safety concern caused his non-selection. The NRC advises the

electrician of the right to pursue a claim before the Department of Labor, and the electrician files a complaint there.

How might ADR work in this scenario? Pursuant to our comments, if the allegation does not meet threshold requirements for NRC investigation (*e.g.*, there is no prima facie case of discrimination because it is evident that the selection decisionmaker did not know of the electrician's concern), no NRC involvement is warranted. The NRC should not attempt to drive resolution of this dispute between the parties through an NRC ADR program. Instead, the matter should be left to the private parties to resolve or litigate.

If the claim does meet NRC investigation thresholds, the appropriate NRC Region may refer the allegation to the licensee for an internal investigation. The NRC may also opt to interview the electrician and gather details on the basis for his claims. The licensee would presumably then use internal resources or an independent party (at its option) to investigate the claim. Based on the information obtained from the licensee and the employee-alleger, the NRC should determine if further pursuit of the matter is appropriate. The initial step thereafter should be discourse between the Region and licensee management on the findings, potential need for enforcement, and potential appropriate restorative actions. If these discussions are not fruitful in resolving the matter, the parties should then have the option to enter into an ADR phase. The mediation should focus on the facts that led to the electrician's perception and the perception of others in the workplace that he was discriminated against, and the resolution should focus on measures that might prevent such perceptions from occurring in the future. As an example, if the electrician perceives he was discriminated against because the selection decisionmaker had exhibited a pattern of disinterest in safety issues raised in the department, resolution of the claim might include a special counseling session for the decisionmaker and continued observation of his responsiveness to employee concerns. The neutral would assist in exploring the impact of the perceived discrimination on the environment and the potential restorative actions.

IV. Conclusion

ADR may be as useful in resolving disputes in the discrimination enforcement context as it has proven to be in numerous other contexts. We support the Staff's consideration of a pilot program for ADR in discrimination cases, and we anticipate that ADR will become useful in a wide variety of other enforcement matters as well. We request that the NRC Staff give serious consideration to implementing a pilot program for ADR with the characteristics described above and carefully define the goals, scope and procedures for such a program.

From: Terry Lodge <tjlodge50@yahoo.com>
To: <nrcrep@nrc.gov>
Date: Fri, Aug 16, 2002 1:10 PM
Subject: Citizen comment on proposed use of ADR in NRC enforcement proceedings

8/21/02
67FR54237
(1)

To the NRC:

I am a lawyer. I am very familiar with alternate dispute resolution mechanisms of all types.

ADR in the context of the NRC is so stupid it defies imagining. You either regulate, reserving as regulator some discretion to go easy depending on circumstances, or you don't. You don't threaten to regulate - which surely happens virtually never at the NRC (witness the corrupt mishandling of the Davis-Besse shutdown order in fall 2001) - and then use alternate dispute resolution to give a corrupt or suspect deal the appearance of being "reasonable".

As a regulator, the NRC obviously has the discretion to go easy or tough on a utility. Inserting a mediator into a process that already takes too long and can clearly be thoroughly compromised from a political standpoint will do nothing to restore the NRC's long-eroded authority over nuclear utilities.

The NRC wishes to delegate its responsibility to a "neutral" - someone devoted to finding a middle ground. This has no place whatever in the regulation of an industry which must handle its industrial processes with 100% integrity. It is irresponsible for the NRC to even consider so silly an idea.

Terry Lodge
316 N. Michigan St., Suite 520
Toledo, OH 43624

> NRC SEEKS PUBLIC COMMENT ON USE OF ALTERNATIVE
> DISPUTE
> RESOLUTION IN ITS ENFORCEMENT PROGRAM
> Printable Version <Picture: PDF Icon>
>
>
> The Nuclear Regulatory Commission is seeking public
> comment on the
> development of a pilot program to evaluate the
> possible use of alternative
> dispute resolution (ADR) in its enforcement program.
>
>
> ADR is defined as any procedure that is used to
> resolve issues in
> controversy. It can involve the use of a neutral
> third party to resolve
> conflicts that can include facilitated discussion,

Template = ADM-013

E-RIDS = ADM-03
Add = B. Westreich (BCW)

> mediation, fact-finding,
> mini-trials and arbitration. The Environmental
> Protection Agency, the U.S.
> Navy and the Federal Energy Regulatory Commission
> are among those agencies
> that have used these techniques effectively. The NRC
> is considering using
> ADR in its enforcement program.
>
> In considering the use of ADR in a pilot program yet
> to be designed, the
> NRC is seeking public comment on whether to use it
> at certain points in the
> enforcement process, such as: (1) following
> identification of wrongdoing or
> an allegation of discrimination, but prior to a full
> investigation; (2)
> following an investigation that substantiates the
> matter, but prior to an
> enforcement conference; (3) following the issuance
> of a Notice of Violation
> and proposed civil penalty, but prior to imposition
> of a civil penalty; and
> (4) following an imposition of civil penalty, but
> prior to a hearing on the
> matter.
>
> The staff requests that comments be focused on
> issues related to the
> implementation of a pilot program to test the use of
> ADR at any of the four
> steps in the enforcement process, and include such
> factors as what
> techniques would be useful at each point, what pool
> of neutrals might be
> used, who should attend the ADR sessions, and what
> ground rules should
> apply. Also, the staff requests that comments be
> focused on the pros and
> cons of using ADR at points in the enforcement
> process and in maintaining
> safety, increasing public confidence, and
> maintaining the effectiveness of
> the enforcement program.
>
> Written comments can be sent to Chief, Rules and
> Directives Branch,
> Division of Administrative Services, Office of
> Administration, Mail Stop
> T-6D59, U.S. Nuclear Regulatory Commission,
> Washington, DC 20555-0001.
> Comments may also be submitted to nrcrep@nrc.gov.
> All comments should be
> submitted within 60 days of publication of a Federal
> Register notice,
> expected shortly.

>
> The NRC also plans to hold several public meetings
> and workshops between
> September 2 and October 14 in Hanford, Washington;
> Chicago, Illinois; San
> Diego, California; New Orleans, Louisiana; and
> Washington, D.C. on the
> possible use of ADR. Specific dates and meeting
> locations will be announced
> on the NRC's Office of Enforcement web site at:
>
http://www.nrc.gov/what-we-do/regulatory/enforcement.html.
>

8/21/02
67FR54237
(2)

From: "Patron" <patron@library.phila.gov>
To: <nrcrep@nrc.gov>
Date: Fri, Aug 23, 2002 1:35 PM
Subject: Alternate Dispute Resolution.

Dear NRC,

Generally I would be in favor of ADR. However the NRC has always acted as if promotion of nuclear power is its chief and only duty. I fear that ADR would be used as one more barrier to a timely and fair hearing process.

Specifically ADR would be used as a means to impede intervenors' rights.

Marv Lewis
marvlewis@juno.com
3133 Fairfield St.
Phila. PA 19136
215 676 1291

E-RIDS=ADM-03
Add = B. Westreich (BCW)

Template = ADM-013